

HIGH-LEVEL CONFERENCE
“RESPONSES TO PRISON OVERCROWDING”
(Strasbourg, 24-25 April 2019)
OPENING SESSION

**Speaking points - opening speech by Mr Mykola GNATOVSKYY,
President of the European Committee for the Prevention of Torture (CPT)**

Ladies and Gentlemen,

- In some of the most overcrowded prison cells I have visited over the last years, the living space was as little as 1 m² per person. Prisoners were locked up for some 23 hours a day in a state of enforced idleness.
- Such a level of overcrowding was a breeding ground for more staff-inmate tensions and inter-prisoner violence. As one prisoner put it in his own words: “we are just treated like sardines, squashed into a tiny cell, doing nothing other than fighting each other”.
- We all agree: prison overcrowding is toxic. It can turn a prison into a human warehouse and can undermine all the efforts made to give the absolute prohibition of torture and inhuman or degrading treatment or punishment a practical meaning in prisons. It can also expose the most vulnerable prisoners to criminal subcultures and make prisons crime schools. In short, it can defeat the very purpose of imprisonment.
- Despite early warnings from the CPT and, where they do exist or operate effectively, other torture prevention mechanisms, in spite of many relevant judgments of the European Court of Human Rights, including pilot judgments, and notwithstanding the greater awareness among criminal justice actors, the scourge of prison overcrowding is far from being eradicated.
- Prison overcrowding is to prison services what smoking is to public health services. We know that “Prison overcrowding kills” and that “Prison overcrowding seriously harms prisoners and those around them”. But prison overcrowding is the result of a strong addiction: ever stricter penal policies, generally ending up in more and more persons being sent to prison and serving longer prison sentences, slow court proceedings resulting in accused persons spending more time in pre-trial detention or and in a never-ending increase in the number of places in prisons.
- During its numerous visits to prisons over the last 30 years, the CPT has observed tangible progress in many Council of Europe member states in combating overcrowding and in implementing relevant recommendations of the Committee. Changes to the criminal legislation and the adoption and better use of a broader set of alternatives to imprisonment have often made it possible to reverse the general trend of an increase of the prison population. In these countries, CPT delegations have been able to see significant improvements in the daily relations between staff and prisoners and between prisoners themselves. Vulnerable prisoners began to be better cared for. Prisoner accommodation began to offer more privacy. Prisoners generally began to

have better access to out-of-cell activities and prison staff began to enjoy better working conditions.

- However, the Committee also saw relapse phenomena and a resurgence of long-lasting prison overcrowding in a number of member states. In a few instances, the persistent failure to improve the situation in the light of the Committee's recommendations was an important factor in the decision of the Committee to make a public statement in application of Article 10, paragraph 2 of the Convention establishing the CPT.
- Failure to combat overcrowding led a number of countries to seek temporary solutions – not to say “safety valves” – to mitigate the risks of explosion. By way of illustration, some years ago, Hungary introduced a so-called balancing programme whereby the prison service re-allocated prisoners nationwide to ensure an equal spread of overcrowding amongst the prisons. At the same time, the CPT found that this seriously limited possibilities for prisoners to have proper contact with the outside world, thereby increasing tensions amongst prisoners and between prisoners and staff. Until a couple of years ago, Belgium opted for renting a staffed and equipped prison in another member state, namely the Netherlands. Of course, this was clearly not meant to be a viable solution in the long run. Such an arrangement was based on a complex treaty and raised a number of practical issues.
- The way forward must start with a detailed overview of the situation. It is never a solution to remain in a state of denial or to downplay the scale of the problem. It is therefore crucial to use a common measuring rod, so to speak, when it comes to the minimum amount of living space that should be offered to each prisoner and to determine with precision the actual level of overcrowding in each prison cell, in each prison and in the prison system as a whole. The Committee has been instrumental in drawing the line between the “acceptable” or “desirable” on the one hand and the “unacceptable” or “undesirable” on the other hand. Since the 1990s, the CPT has considered that each person should be offered at least 4 m² of living space in multi-occupancy cells and at least 6 m² in single cells. Many countries have changed their laws and regulations to adopt the “standards” advocated by the Committee. Since its 2016 judgment in the case of *Muršić v. Croatia*, the Court has taken the CPT's standards into account and basically considered that the non-observance of the 4 m² yardstick raises an issue under Article 3 of the European Convention on Human Rights, with a strong presumption of violation where there is less than 3 m² of living space and living space in the range of 3 to 4 m² per inmate being a weighty factor in the Court's assessment of the adequacy of conditions of detention. I am sure that Judge O'Leary will further elaborate on this.
- The minimum amount of living space per prisoner should therefore not only be reviewed but also monitored in the light of CPT “standards” and the Court's case-law and, and the official capacities of all prison establishments revised accordingly.
- One other lesson that can be drawn from the CPT's experience is that combating prison overcrowding requires ongoing communication and concerted action. Let me quote the Council of Europe's White Paper on prison overcrowding: “There should be constant dialogue and common understanding and action involving policy makers,

legislators, judges, prosecutors and prison and probation managers in each member state". Governments alone cannot tackle prison overcrowding. And this is why today's conference is so important.